

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 679 of 1999

For Approval and Signature:

THE HON'BLE MR.JUSTICE A.M.KAPADIA

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

Whether this case involves a substantial question
of law as to the interpretation of the

4 constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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PATEL BHARATKUMAR PARSHOTAMDAS THRO' POA PATEL CHIMANBHAI -
Petitioner(s)

Versus

PATEL GORDHANBHAI BHUDARBHAI & 2 - Respondent(s)

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Appearance :

MR DHARMESH V SHAH for Petitioner No(s).: 1.
MR KB PANCHOLI FOR MR YATIN SONI for Respondent No(s).: 1,2.

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CORAM :THE HON'BLE MR.JUSTICE A.M.KAPADIA

Date : 29/06/2005

ORAL JUDGMENT

1.By filing instant petition under Section 115 of the Code of Civil Procedure ('the Code' for short), the petitioner seeks to challenge the order dated 17.2.1999 rendered in Civil Misc. Appeal No.79 of

1998 by the learned Appellate Judge, Nadiad by which the appeal filed by the respondents came to be allowed and thereby the order dated 11.3.1998 recorded below application Ex.5 in Civil Suit No.170 of 1997 by the learned Civil Judge (JD), Petlad granting interim injunction during the pendency of the suit in favour of the petitioner came to be quashed and set aside.

2.Having heard Mr. Dharmesh Shah , learned advocate for the petitioner and Mr. KB Pancholi, learned advocate for Mr. Yatin Soni, learned advocate for the respondents and having perused the impugned orders, one passed by the learned Civil Judge (JD), Petlad and second one passed by the learned appellate Judge, Nadiad, which are interlocutory orders, this petition filed under Section 115 of the Code is not maintainable in view of the amendment made in Section 115 of the Code to the effect that interlocutory orders are no longer reviewable under section 115 of the Code due to substitution of the proviso which inter alia

deleted erstwhile clause (1) (b) of the proviso, the revision application deserves to be rejected.

3. It has been held by the Supreme Court of India in the case of **Surya Dev Rai v. Ram Chander Rai**, (2003) 6 SCC 675, that Section 115 of the Code as amended by Act 46 of 1999, does not now permit a revision petition being filed against an order disposing of an appeal against the order of the trial court whether confirming, reversing or modifying the order of injunction granted by the trial court. The reason is that the order of the High Court passed either way would not have the effect of finally disposing of the suit or other proceedings. The exercise of revisional jurisdiction in such a case is taken away by the substitution of the proviso to Section 115 (1) of the Code by said Amendment Act 46 of 1999. The Supreme Court has further observed that the effect of the erstwhile clause (b) of the proviso being deleted and a new proviso having been inserted, is that the revisional jurisdiction, in respect of an

interlocutory order passed in a trial or other proceedings, is substantially curtailed. The revisional jurisdiction cannot be exercised unless the requirement of the proviso is satisfied.

4. Moreover, the Supreme Court in the case of **Shiv Shakti Co-operative Housing Society v. M/s. Swaraj Developers**, 2003 AIR SCW 2445 has held that interim orders or orders which do not finally decide lis cannot be subject matter of revision. The mode of procedure altered by statutory change i.e., applications pending before amendment came into force not saved by section 32 (2) (i) of the amendment Act. The maintainability of revision applications admitted before amendment therefore has to be decided as per altered mode i.e., as per amended provisions since no substantive right is involved and in such cases provisions of section 6 of the General Clauses Act cannot be applied. Therefore, in substance the Supreme Court has said that the amended proviso to Section 113 (3) is retrospective in operation and therefore

maintainability of revision applications admitted before amendment has to be decided as per altered mode i.e., as per amended provisions.

5. In view of the aforesaid state of affairs, the petition deserves to be rejected as it is not maintainable.

6. For the foregoing reasons, the petition fails and accordingly it is rejected with no order as to costs. Rule is discharged.

7. However, on the facts and in the circumstances of the case, the learned Civil Judge (JD), Petlad is directed to give top priority to the hearing of Civil Suit No.170 of 1997 and shall dispose it of as early as possible and preferably on or before 30.4.2006. The parties shall cooperate for the expeditious disposal of the suit. In the meanwhile, the parties are directed to maintain status quo with regard to the suit property as exists today.

(A.M. Kapadia, J.)

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(karan)

6-C-CRA-679-1999-Y-1.sxw

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